IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

SWIPE INNOVATIONS, LLC,
 	
    Plaintiff,
 	
    v.
 	
WORLDPAY US, INC.,
 	
    Defendant.
	CIVIL ACTION NO. 9:12-CV-75
	
	SECOND AMENDED COMPLAINT
	FOR PATENT INFRINGEMENT
	
	JURY TRIAL DEMANDED

Plaintiff Swipe Innovations, LLC ("Swipe") files this Second Amended Complaint against the above-named defendant, alleging, based on its own knowledge as to itself and its own actions, and based on information and belief as to all other matters, as follows:

PARTIES

1.   Swipe is a limited liability company formed under the laws of the State of Texas, with a principal place of business in Houston, Texas.

2.   Defendant WorldPay US, Inc. ("WorldPay") is a Georgia corporation with a principal place of business in Lincoln, Rhode Island. WorldPay can be served via its registered agent for service of process: The Prentice Hall Corporation, 211 E. 7th Street, Ste 620, Austin, Texas 78701-3218.

JURISDICTION AND VENUE

3.   This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284–85, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. §1331 and §1338(a).

4.   Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b). Upon information and belief, the defendant has transacted business in this district and has committed and/or induced acts of patent infringement in this district.

5.   The defendant is subject to this Court's specific and general personal jurisdiction under due process and/or the Texas Long Arm Statute, due at least to defendant's substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this district.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 5,351,296

6.   On September 27, 1994, United States Patent No. 5,351,296 ("the 296 patent") was duly and legally issued by the United States Patent and Trademark Office for an invention titled "Financial Transmission System."

7.   The 296 patent relates to performing financial transactions with a financial card over a communications network, and, for example, to a method and device for determining and securely transmitting an account code of such a financial card over a communications link in a communications network to a remote location.

8.   Swipe is the owner of the 296 patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the 296 patent against infringers, and to collect damages for all relevant times.

9.   WorldPay, either alone and/or in conjunction with others, including its customers and/or suppliers, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale payment terminal products and/or systems (including at least products and/or systems with encrypting PIN pads, which includes at least the following products: Hypercom S9, Ingenico i3010, Ingenico i5100, Ingenico i6550, Ingenico Elite 712, Hypercom ICE 5500, Hypercom P1300, Hypercom Optimum L4100, Hypercom Optimum L4250, Ingenico eN-Crypt 2100, Ingenico eN-Touch 1000, NCR 5993) that infringed one or more claims of the 296 patent.

10.   WorldPay is accused of infringing the 296 patent both directly and indirectly with respect to the Accused Products and Accused Services (as defined herein).

11.   The accused products include payment systems with encrypting PIN pads (including standalone PIN pads or payment terminals incorporating PIN pads), that can perform financial transactions over a communication network in conjunction with a telephone ("Accused Products").

12.   An example of an infringing product that is a standalone PIN pad is

Equinox Payments's[1] P1300:

Source: http://www.equinoxpayments.com/devices/p1300

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[1] Equinox Payments was formerly known as Hypercom USA. *See* http://www.equinoxpayments.com/news/payment-industry-leader-hypercom-usa-changes-name-to-equinox-payments-llc.

13.   An example of an infringing product that is a payment terminal

incorporating a PIN pad is the Ingenico i5100:

Source: http://www.amazon.com/Ingenico-I5100-Dual-Credit-Terminal/dp/B003D0P874

14.   The Accused Products perform financial transactions as part of processes

that encrypt, transmit, and decrypt financial account data (e.g., PINs) following the

Derived Unique Key Per Transaction ("DUKPT") method. The devices are particularly

useful in performing financial transactions involving secret account codes, such as PIN

debit transactions.   The services that involve the use of the Accused Products to carry out

such financial transactions are referred to as the "Accused Services."[2]

15.   DUKPT is a key management method approved by the Payment Card

Industry ("PCI") Security Standards Council for secure financial transactions. It

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[2] Certain models of the Accused Products were made under the Hypercom brand by various companies over the relevant period for damages in this case. The Accused Products and Accused Services do not include any products or services made or sold by Hypercom Corporation or its affiliates on or before August 4, 2011.

incorporates a standard administered by the American National Standards Institute ("ANSI") and described in ANSI X9.24 Part 1, titled "Retail Financial Services Symmetric Key Management."   The Accused Products have been specially approved under PCI specifications, or their equivalent, to perform financial transactions in accordance with the DUKPT standard.

16.   WorldPay either alone and/or in conjunction with others, including its customers and/or suppliers, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale payment terminal products and/or systems (including at least the following models: Hypercom S9, Ingenico i3010, Ingenico i5100, Ingenico i6550, Ingenico Elite 712, Hypercom ICE 5500, Hypercom P1300, Hypercom Optimum L4100, Hypercom Optimum L4250, Ingenico eN-Crypt 2100, Ingenico eN-Touch 1000, NCR 5993) that infringed one or more claims of the 296 patent.

17.   WorldPay's infringement was willful at least from the filing and/or service date of the first complaint against it for infringement of the 296 patent.

18.   WorldPay's customers and/or suppliers directly made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale payment terminal products and/or systems (including at least the following models: Hypercom S9, Ingenico i3010, Ingenico i5100, Ingenico i6550, Ingenico Elite 712, Hypercom ICE 5500, Hypercom P1300, Hypercom Optimum L4100, Hypercom Optimum L4250, Ingenico eN-Crypt 2100, Ingenico eN-Touch 1000, NCR 5993) that infringed one or more claims of the 296 patent.

19.   WorldPay induced and/or contributed to infringement of the 296 patent by its customers and/or suppliers.

20.   WorldPay took active steps, directly and/or through contractual

relationships with others, to cause infringement with both knowledge of the 296 patent and

the specific intent to cause its customers and/or suppliers (e.g., merchants, third-party

manufacturers) to make, use, sell, import, or otherwise provide the Accused Products

and/or perform the Accused Services in a manner that infringed the 296 Patent. Such steps

by WorldPay included, among other things, advising or directing its customers and/or

suppliers to make, use, sell, or import the Accused Products or perform the Accused

Services in an infringing manner; advertising and promoting the use of the Accused

Products or performance of the Accused Services in an infringing manner; and/or

distributing instructions that guide users to use the Accused Products or to perform the

Accused Services in an infringing manner.[3]

21.   The Accused Products contain hardware and software components that are

especially designed to be used in conjunction with other devices or systems that may not

be provided by WorldPay. These other devices or systems may include: key loading

devices; point of sale terminals and cash registers; host security modules/hardware security

modules; and computers operated by front-end networks, acquirers, intermediate switches,

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[3] Ex. E to 11-29-12 Infringement Contentions [Worldpay Materials] (Including Hypercom T7 Plus Terminal Installation Guide, Hypercom T7Plus Terminal Marketing Materials, RBS WorldPay Paper on PIN-Entry Devices that are PCI Compliant, Ingenico Marketing Materials for Cardholder Data Security Solutions, Ingenico 6500 User's Guide, Product Comparison for Ingenico PIN Pads, Marketing Materials for Ingenico Elite 710, Manual for Ingenico 3010, Ingenico 5100M User Guide, Ingenico 5100 Manual, Marketing Materials for Ingenico 6550, Marketing Materials for Ingenico Elite 712, ICE 5500 Plus Terminal Install Guide, Press Release: Hypercom Introduces High-Speed Optiimum Card Payment Terminal with Intel® XScale® Technology for US Multi-Lane Retailers, Marketing Materials for Hypercom Optimum L4250, Marketing Materials for Hypercom Optimum L4250, Marketing Materials for Ingenico eN-Crypt 2100, Marketing Materials for eN-Touch 1000, NCR5993 Signature Capture Payment Terminal Startup User Guide Release 1.0).

debit networks, card issuers, and others. To the extent WorldPay does not provide these other devices and systems, it takes active steps, directly and/or through contractual relationships, to cause infringement by its customers and/or suppliers, including, among other things, advising or directing others to integrate such other devices and systems with Accused Products; advertising and promoting the use by others of the Accused Products with such other devices and systems; and distributing instructions that guide users to integrate the Accused Products with such other devices and systems. *Id.*

22.   The Accused Products have hardware and/or software components that are especially designed to be used with such other devices and systems in carrying out DUKPT transactions, as shown by the fact that the Accused Products were separately tested for and approved for use with the DUKPT standard, actions required by PCI guidelines. These components in the Accused Products constitute a material part of the invention of one or more asserted claims of the 296 patent and are not staple articles of commerce suitable for substantial non-infringing use.   These distinct and separate components are used only to perform the DUKPT key management method and not any other key management method approved for use in financial transactions involving PIN data transmission by PCI or similar organizations.

23.   For the reasons stated above, WorldPay infringes the 296 patent both directly and indirectly.

24.   Swipe has been damaged as a result of the infringing conduct by the defendant alleged above and, thus, such defendant is liable to Swipe in an amount that adequately compensates Swipe for defendant's infringement, which, by law, cannot be less

than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

Swipe hereby requests a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

Swipe requests that the Court find in its favor and against the defendant and that the Court grant Swipe the following relief:

a. Judgment that one or more claims of the 296 patent have been directly and/or indirectly infringed, either literally and/or under the doctrine of equivalents, by the defendant and/or by others acting in concert therewith;

b. A permanent injunction enjoining the defendant and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the 296 patent;

c. Judgment that the defendant account for and pay to Swipe all damages to and costs incurred by Swipe because of defendant's infringing activities and other conduct complained of herein, including, under 35 U.S.C. § 284, enhanced damages for willful infringement at least as of the date of the service of the first complaint against it, by which time the defendant undoubtedly had knowledge of the patent-in-suit;

d. That Swipe be granted pre-judgment and post-judgment interest on the damages caused by the defendant's infringing activities and other conduct complained of herein;

e. That this Court declare this an exceptional case and award Swipe its reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285; and

f. That Swipe be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: December 5, 2012   Respectfully submitted,

                                           /s/ Larry D. Thompson, Jr.
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                                           Attorneys for Swipe Innovations, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of December 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

                                           /s/ Larry D. Thompson, Jr.
                                           Larry D. Thompson, Jr.